

No. 1996-43

AN ACT

HB 1940

Amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties," further providing for definitions, for operator's license, for bonds, for health and safety and for reining of previously affected areas; authorizing removal of coal refuse; further providing for financial guarantees, for reclamation bond credits and for Reining Environmental Enhancement Fund; and providing for the Department of Environmental Protection's authority for the awarding of grants.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "government-financed reclamation contract" and "surface mining activities" in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, amended or added December 18, 1992 (P.L.1384, No.173), are amended and the section is amended by adding a definition to read:

Section 3. Definitions.—The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

* * *

"Government-financed reclamation contract" shall mean:

(1) For the purposes of section 4.8, a federally funded or State-funded and -approved abandoned mine reclamation contract entered into between the department and an eligible person or entity who has obtained special authorization to engage in incidental and necessary extraction of coal *or in removal of coal refuse* pursuant to government-financed reclamation which is either:

(i) a State-financed reclamation contract less than or equal to fifty thousand dollars (\$50,000) total project costs, where up to five hundred (500) tons of coal is extracted, including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract;

(ii) a State-financed reclamation contract authorizing the removal of coal refuse, including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area;

(iii) a State-financed reclamation contract greater than fifty thousand dollars (\$50,000) total project costs or a federally financed abandoned mine reclamation project: Provided, That the department determines in writing that extraction of coal is essential to physically accomplish the reclamation of the project area and is incidental and necessary to reclamation; or

(iv) federally financed or State-financed extraction of coal which the department determines in writing to be essential to physically extinguish an abandoned mine fire that poses a threat to the public health, safety and welfare.

(2) For purposes of determining whether or not extraction *of coal* is incidental and necessary under section 4.8, the department shall consider standard engineering factors and shall not in any case consider the economic benefit deriving from [coal] extraction *of coal*. Necessary extraction *of coal* shall in no case include:

(i) the extraction of coal in an area adjacent to the previously affected area which will be reclaimed; or

(ii) the extraction of coal beneath the previously affected area which will be reclaimed.

* * *

“No-cost reclamation contract” shall mean a contract entered into between the department and an eligible person for the purpose of reclaiming unreclaimed abandoned mine lands and which does not involve the expenditure of Commonwealth funds.

* * *

“Surface mining activities” shall mean the extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. “Surface mining activities” shall not include any of the following:

(1) [Coal extraction] *Extraction of coal or coal refuse removal* pursuant to a government-financed reclamation contract for the purposes of section 4.8.

(2) [Coal extraction] *Extraction of coal* as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board.

(3) The reclamation of abandoned mine lands not involving [coal extraction] *extraction of coal* or excess spoil disposal under a written agreement with the property owner and approved by the department.

(4) Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations.

* * *

Section 2. Section 3.1(a)(2), (b) and (c) of the act, amended October 12, 1984 (P.L.916, No.181) and December 18, 1992 (P.L.1384, No.173), are amended to read:

Section 3.1. Operator's License; Withholding or Denying Permits or Licenses; Penalty.—(a) * * *

(2) Any person who proceeds to mine **[minerals by the surface mining method] coal** as an operator without having applied for and received a license as herein provided or in violation of the terms thereof shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars (\$5,000) or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities, or undergo imprisonment not exceeding one year, or both. The fine shall be payable to the Surface Mining Conservation and Reclamation Fund.

(b) The department shall not issue **[any surface mining operator's license or]**, renew or amend **[any] the license of any person who mines coal by the surface mining method** if it finds, after investigation, and an opportunity for an informal hearing that a person, partner, associate officer, parent corporation or subsidiary corporation has failed and continues to fail to comply or has shown a lack of ability or intention to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the department of a declaration of forfeiture of a person's bonds. If the department intends not to renew a license, it shall notify the licensee of that fact at least sixty (60) days prior to the expiration of the license; prior to the expiration, the licensee shall be provided an opportunity for an informal hearing. This notice requirement shall not preclude the department from denying an application to renew a license within the sixty (60) day period so long as the department provides an opportunity for an informal hearing prior to not renewing the license. Any person who opposes the department's decision on issuance or renewal of a license shall have the burden of proof.

(c) The application for license, renewal or permit shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in Pennsylvania covering all surface mining **[operations] activities** of the applicant in this State and affording personal injury and property damage protection, to be written for the term of the license, renewal or permit. The total amount of insurance shall be in an amount adequate to

compensate any persons damaged as a result of surface mining **[operations] activities**, including but not limited to use of explosives, and entitled to compensation under the applicable provisions of State law. The total amount shall be as prescribed by rules and regulations: Provided, That the insurance or a bond guarantee shall be required as part of a **[surface] mining permit** application if the department determines in its best conservative estimate that the **[mining operation] surface mining activities** may affect a public or private water supply. However, it is further provided that the operator retains the option to include the required liability insurance related to section 4.2(f) of this act, pertaining to replacement or restoration of water supplies as part of the application for or renewal of a license.

(1) The department shall accept a certificate of self-insurance from the applicant, in lieu of a certificate for a public liability insurance policy, accompanied by satisfactory evidence from the applicant that it meets one of the following two financial requirements for such self-insurance:

(i) The applicant has:

(A) a net working capital and tangible net worth each at least six times the amount of the liability coverage to be demonstrated;

(B) tangible net worth of at least ten million dollars (\$10,000,000); and

(C) assets in the United States of at least ninety per cent of total assets or at least six times the amount of liability coverage.

(ii) The applicant maintains:

(A) a current bond rating equal to or better than BBB (Standard and Poor's) or Baa (Moody's);

(B) tangible net worth of at least ten million dollars (\$10,000,000);

(C) tangible net worth at least six times the amount of the liability coverage to be demonstrated; and

(D) prime assets in the United States of at least ninety per cent of total assets or six times the liability coverage to be demonstrated.

(2) For purposes of this subsection, satisfactory evidence from the applicant shall be satisfied by submission of a Form 10-K Annual Report, as submitted to the Securities and Exchange Commission or validation by an independent certified public accountant.

(3) Clauses (1) and (2) of this subsection shall be void one year after the effective date of this amendatory act.

* * *

Section 3. Sections 4(g.1), (g.2) and (h) and 4.2(f)(2) of the act, amended or added December 18, 1992 (P.L.1384, No.173), are amended to read:

Section 4. Mining Permit; Reclamation Plan; Bond.—* * *

(g.1) (1) Where the operator demonstrates that all standards for Stage II bond release have been satisfied with the exception of consistently meeting the mine drainage effluent limitations specified in the permit or otherwise required by law, the department may release the amount of bond which exceeds the cost of ensuring treatment to the effluent limitations specified in the permit, this act, the act of June 22, 1937 (P.L.1987, No.394), known as

“The Clean Streams Law,” the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) and the rules and regulations promulgated thereunder, of all the discharges emanating from or hydrologically connected to the mine site for a period of at least fifty (50) years, as calculated by the department.

(2) The release of any bond pursuant to [subsection (a)] *clause (1)* or pursuant to regulations promulgated by the Environmental Quality Board establishing a final program in no way alleviates the operator’s responsibility to treat discharges of mine drainage emanating from or hydrologically connected to the site to the standards set forth in the permit, this act, “The Clean Streams Law,” the Federal Water Pollution Control Act and the rules and regulations promulgated thereunder.

(g.2) (1) Until such time as the Environmental Quality Board promulgates regulations concerning release of reclamation bonds on mine sites with minimal-impact post-mining discharges, the department may release reclamation bonds held solely for minimal-impact post-mining discharges pursuant to this section, where an operator demonstrates that all of the following exist:

(i) All the criteria for reclamation bond release have been satisfied, except for the existence of a minimal-impact post-mining discharge, under the department’s regulations for bond release on surface coal mines except as provided in clause (2)(i).

(ii) The discharge of mine drainage is a minimal-impact post-mining discharge, as demonstrated by a sampling protocol approved by the department.

(iii) The [discharger] *operator* has designed, constructed and maintained a functioning passive treatment system approved by the department which substantially improved water quality of the discharge after it enters the passive treatment system to the satisfaction of the department. The department shall take into account the cumulative loading of other discharges in ascertaining whether water quality standards are being achieved.

(iv) The [discharger] *operator* has established a site-specific trust fund for each minimal-impact post-mining discharge in an amount calculated by the department at least equal to annual operation and maintenance costs of a passive treatment system, capital costs for replacement of the passive treatment system in twenty-five (25) years from the date of its installation, an inflation factor and the cost of treatment of the discharge for at least fifty (50) years. The minimum amount of the fund shall be ten thousand dollars (\$10,000).

(2) Upon a demonstration by the mine operator, approved by the department, that the requirements set forth in clause (1) have been met, the department may release the reclamation bond according to the following schedule:

(i) Up to eighty-five per cent of the reclamation bond on a site with a minimal-impact post-mining discharge upon a demonstration by the operator that all of the following have been met:

(A) The operator has demonstrated and the department has found that all reclamation standards for Stages I and II, except for the existence of a minimal-impact post-mining discharge, have been met by the operator.

(B) A trust fund in an amount and on a form containing such terms and conditions approved by the department has been established and fully funded as financial assurance for maintenance and replacement of the approved passive treatment system.

(C) The operator has demonstrated to the satisfaction of the department that the passive treatment system has been properly designed, constructed and maintained and is functioning properly.

(ii) Up to the entire amount of reclamation bond on a site with a minimal-impact post-mining discharge where:

(A) The operator has demonstrated and the department has found that all of the reclamation standards for Stages I, II and III bond release, except for the existence of the minimal-impact post-mining discharge, have been met.

(B) A trust fund in an amount and on a form containing such terms and conditions approved by the department has been established and fully funded as financial assurance for maintenance and replacement of the approved passive treatment system.

(C) The operator has demonstrated to the satisfaction of the department that the passive treatment system has been properly designed, constructed and maintained and is functioning properly.

(3) The department may, if the passive treatment system is not constructed, maintained or functioning properly, pursue any remedies at law or equity, order the **[discharger] operator** to upgrade the treatment system or to provide conventional treatment and increase the amount of the site-specific trust fund required to reflect the cost of additional treatment.

(4) The Environmental Quality Board shall promulgate final regulations establishing a program for releasing reclamation bonds held solely for minimal-impact post-mining discharges. In promulgating such regulations, the board shall consider various factors, including, but not limited to, the factors set forth in clause (1).

* * *

(h) If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the department shall declare such bond forfeited, and the amount of the forfeited bond shall be paid over to the department within thirty (30) days after notice by certified mail from the department, and that amount shall be held in escrow with any interest on the bond accruing to the department pending the resolution of any appeals, unless it is determined by a court of competent jurisdiction after exhaustion of appeals that the Commonwealth was not entitled to all or a portion of the amount forfeited in which case the interest

shall accrue proportionately to the surety in the amount determined to be improperly forfeited by the department, if any. Where the operator has deposited cash or securities as collateral in lieu of a surety bond, the department shall declare such portion of said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further surety bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to contest such action and appeal therefrom as herein provided. A corporate surety issuing surety bonds which are forfeited by the department shall have the option of reclaiming the forfeited site, in lieu of paying the bond amount to the department, upon the consent and approval of the department. *A corporate surety issuing surety bonds which are forfeited may propose, upon the consent and approval of the department, the reclamation of the forfeited mine sites after payment of the amount of the forfeited bonds to the department. If the department approves the corporate surety's proposal to reclaim the forfeited site after the surety pays the bond amount to the department, the State Treasurer shall return to the corporate surety any moneys paid to the department in connection with the forfeited bond provided the proposal includes acceptable financial assurance. Acceptable financial assurance includes the department withholding return of the moneys until the reclamation is complete or the posting of a replacement bond.*

* * *

Section 4.2. General Rule Making; Health and Safety.—* * *

(f) * * *

(2) It shall be presumed, as a matter of law, that a surface mine operator or owner is responsible without proof of fault, negligence or causation for all pollution, except bacteriological contamination, or diminution of public or private water supplies within one thousand (1,000) linear feet of the boundaries of the [land affected or acreage assigned to the surface mining operation under section 4 by a permit issued by the department.] *areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads. If surface mining activities are conducted on areas which are not permitted and bonded, this presumption applies to all water supplies within one thousand (1,000) linear feet of the land affected by such operations.* There shall be only five defenses to the presumption of liability provided in this clause. A mine owner or operator must affirmatively prove by a preponderance of evidence that one of the following conditions exists:

(i) The landowner or water supply company refused to allow the surface mining operator or owner access to conduct a survey prior to commencing mining activities.

(ii) The water supply is not within one thousand (1,000) linear feet of the boundaries of the [land affected or acreage assigned to the surface mining operation under section 4 by a permit issued by the department] *areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads.*

(iii) The pollution or diminution existed prior to the surface mining activities as determined by a survey conducted prior to commencing surface mining activities.

(iv) The pollution or diminution occurred as a result of some cause other than the surface mining activities.

(v) The landowner, water supply user or water supply company refused to allow the surface mining operator or owner access to determine the cause of pollution or diminution or to replace or restore the water supply.

* * *

Section 4. Section 4.6(i) of the act, added October 4, 1984 (P.L.727, No.158), is amended to read:

Section 4.6. Remining of Previously Affected Areas.—* * *

(i) For pollution abatement areas subject to a grant of special authorization under this section, the operator shall comply with all requirements relating to bonds set forth in section 4, except that the criteria and schedule for release of bonds shall be as follows:

(1) Up to [fifty] *sixty* per cent of the amount of bond if the operator demonstrates that:

(A) all activities were conducted in accordance with all applicable requirements;

(B) the operator has satisfactorily completed backfilling, regrading and drainage control in accordance with the approved reclamation plan;

(C) the operator has properly implemented each step of the approved abatement plan;

(D) the operator has not caused the baseline pollution load to be exceeded [for] *at any time over* a period of a minimum of six (6) months prior to the submittal of a request for bond release and until the bond release is approved as shown by all ground and surface water monitoring; and

(E) the operator has not caused or contributed to any ground or surface water pollution by re-affecting or mining the pollution abatement area.

(2) [Up to an additional thirty-five per cent of the amount of bond] *An additional amount of bond but retaining an amount sufficient to cover the cost to the Commonwealth of reestablishing vegetation if completed by a third party* if the operator demonstrates that:

(A) the operator has replaced topsoil, completed final grading, planting and achieved successful revegetation in accordance with the approved reclamation plan;

(B) the operator has not caused or contributed to any ground or surface water pollution by reaffected or mining the pollution abatement area; and

(C) the operator has achieved the actual improvement of the baseline pollution load described in the abatement plan and shown by all ground and surface water monitoring for the period of time provided in the abatement plan, or has achieved all of the following: (i) at a minimum, has not caused the baseline pollution load to be exceeded as shown by all ground and surface water monitoring for a period of twelve (12) months [**from the date of initial bond release pursuant to clause (1) prior to the date of application for bond release and until the bond release is approved pursuant to clause (2) or from the date of discontinuance of treatment pursuant to subsection (g);** (ii) conducted all measures provided in the abatement plan and any additional measures specified by the department in writing at the time of initial bond release pursuant to clause (1); (iii) caused aesthetic or other environmental improvements or the elimination of public health and safety problems by remining and reaffected the pollution abatement area; and (iv) stabilized the pollution abatement area.

(3) The remaining amount of bond if the operator demonstrates that:

(A) the operator has not caused the baseline pollution load to be exceeded from the time of bond release pursuant to clause (2) or, if treatment has been initiated any time after such release, for a period of five (5) years from the date of discontinuance of treatment pursuant to subsection (g); and

(B) the applicable liability period section 4(d) of this act has expired.

* * *

Section 5. Sections 4.8, 4.12 and 4.13 of the act, added December 18, 1992 (P.L.1384, No.173), are amended to read:

Section 4.8. Government-Financed Reclamation Contracts Authorizing Incidental and Necessary Extraction of Coal *or Authorizing Removal of Coal Refuse*.—(a) No person may engage in [coal] *extraction of coal or in removal of coal refuse* pursuant to a government-financed reclamation contract without a valid surface mining permit issued pursuant to this act unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary [coal] *extraction of coal or authorizing removal of coal refuse*. The department shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary [coal] *extraction of coal or authorizing removal of coal refuse*. The department may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The department shall not be required to grant a special authorization to any eligible person. The department may, however, in its discretion, grant a special authorization allowing incidental and necessary [coal] *extraction of coal or allowing removal of coal refuse* pursuant to a government-financed reclamation contract in accordance with this section.

(b) Only eligible persons may secure special authorization to engage in incidental and necessary [coal] extraction *of coal or to engage in removal of coal refuse* pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:

(1) The contractor or any related party or subcontractor which will act under its direction has no history of past or continuing violations which show the contractor's lack of ability or intention to comply with the acts or the rules and regulations promulgated thereunder, whether or not such violation relates to any adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor.

(2) The person has submitted proof that any violation related to the mining of coal by the contractor or any related party or subcontractor which will act under its direction of any of the acts, rules, regulations, permits or licenses of the department has been corrected or is in the process of being corrected to the satisfaction of the department, whether or not the violation relates to any adjudicated proceeding, agreement, consent order or decree or which resulted in a cease order or civil penalty assessment. For purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor.

(3) The person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

(4) The person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," in connection with either surface mining or reclamation activities.

(5) The person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

(c) Any eligible person who proposes to engage in [coal] extraction *of coal or in removal of coal refuse* pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. The department may issue the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. A special authorization can only be obtained if

a clause is inserted in a government-financed reclamation contract authorizing such extraction *of coal or authorizing removal of coal refuse* and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provisions of this section. A special authorization shall only be granted by the department prior to the commencement of [coal] extraction *of coal or commencement of removal of coal refuse* on a project area. In order to be considered for a special authorization by the department, an eligible person must demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned mine lands.

(2) The extraction of coal will be incidental and necessary, *or the removal of coal refuse will be required*, to accomplish the reclamation of abandoned mine lands pursuant to a government-financed reclamation contract.

(3) Incidental and necessary [coal] extraction *of coal or in removal of coal refuse* will be confined to the project area being reclaimed.

(4) All [coal] extraction *of coal or in removal of coal refuse* and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:

(i) the applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the government-financed reclamation contract; and

(ii) additional conditions included in the government-financed reclamation contract by the department.

(d) The contractor will pay any applicable per-ton reclamation fee established by the United States Office of Surface Mining Reclamation and Enforcement (OSMRE) for each ton of coal extracted pursuant to a government-financed reclamation project.

(e) Prior to commencing [coal] extraction *of coal or commencement of removal of coal refuse* pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, "The Clean Streams Law," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," where applicable, the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," and, where applicable, the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act." An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated. For *government-financed reclamation contracts other than a no-cost-reclamation contract*, the criteria for establishing the amount of the performance bond

shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above[: **Provided, however, That**]. *The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years, the bond amount shall be a per acre fee which is equal to the department's average per acre cost to reclaim abandoned mine lands, provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount [for long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years]. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified. [The performance bond which is provided by the contractor under a federally financed or State-financed reclamation contract shall be deemed to satisfy the requirements of this section: **Provided, That** the amount of such bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection.]*

(f) The department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of section 4.2 except as surface coal mining is allowed pursuant to that section.

(g) Any person engaging in [coal] extraction *of coal* pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

(h) Extraction *of coal or removal of coal refuse* pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

Section 4.12. [Payment in Lieu of Bond.—(a) The Environmental Quality Board shall publish proposed regulations within one hundred eighty (180) days of the effective date of this act which shall constitute an interim program allowing certain mine operators proposing to reminere abandoned mine lands to be eligible to make payments to the department in lieu of the bond required by this act. The department shall review operator requests to participate in the program on a case-by-case basis

and shall allow operator participation in the payment-in-lieu-of-bond program only when the payment-in-lieu-of-bond special account in the Remining Environmental Enhancement Fund is equal to or exceeds the total reclamation obligation of the Commonwealth which would be incurred under the payment-in-lieu-of-bond program if all participants failed to complete their reclamation obligations.] *Financial Guarantees to Insure Reclamation; Payments to the Remining Financial Assurance Fund.*—(a) *The department is authorized under this section to establish programs to provide financial guarantees to insure reclamation for qualified operators who reclaim abandoned mine lands through remining and to assess and collect payments from qualified operators who choose to purchase such financial guarantees. The financial guarantees are to be supported by a special account in the Remining Financial Assurance Fund. The department shall determine the total amount of financial guarantees that can be supported by the special account based on loss reserves established by the application of the historical rate of mine operator bond forfeitures plus a reasonable margin of safety. The department shall establish underwriting methods which are in keeping with the intent of this section.* In promulgating proposed and final regulations, the Environmental Quality Board shall consider various factors, including, but not limited to, site eligibility, such as environmental hazards, safety hazards and the availability of coal reserves and operator eligibility, such as financial tests and criteria for participation in the program, including an operator's operating ratio, long-term financial stability, denial of coverage by surety bond companies, financial ratio, compliance history, length of time in business and any other factors indicative of an operator's ability to complete reclamation and payments into the fund under the program. [Payments] *Requirements for making payments* into the fund shall be [equal to at least fifty dollars (\$50) per acre per year in the interim program and may be modified by final] *established in* regulations promulgated by the Environmental Quality Board in order to assure the financial stability of the [payment-in-lieu-of-bond] *financial guarantees* program and to provide adequate funds in case of forfeiture but will require no collateralization.

(b) Premium payments will be deposited into the Remining [Environmental Enhancement] *Financial Assurance* Fund and will be reserved in a special account to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used pursuant to section 18(a.1) and (a.2).

(c) Payments under this subsection shall excuse the operator from the requirement to post a bond under this act with respect to the remining permit for which payment is made.

(d) The [payment-in-lieu-of-bond] *financial guarantees* program may be discontinued immediately and notice published in the Pennsylvania Bulletin if twenty-five per cent or greater of the outstanding bond obligation for the [payment-in-lieu-of-bond] *financial guarantees* program is subject

to forfeiture. The special account established in the Remining [Environmental Enhancement] *Financial Assurance* Fund for the [payment-in-lieu-of-bond] *financial guarantees* program shall be the sole source of funds underwriting the [payment-in-lieu-of-bond] *financial guarantees* program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

Section 4.13. Reclamation Bond Credits.—(a) A bond credit, financially backed by a special account for that purpose established in section 18(a.2), in the form of a bond letter, may be issued by the department to a licensed mine operator for voluntary reclamation of abandoned mine lands as approved by the department. The department shall in determining whether or not to issue a bond credit:

(1) Where a coal mining activity permit is not required, require a licensed mine operator to submit a proposal to the department to reclaim a specific area, together with the estimated cost of the reclamation based on current bonding rates.

(2) Review the proposal and find in writing that the operator's estimated cost of reclamation is accurate and that the proposed location of the project is acceptable to the department.

(3) Not issue any bond credits to an operator if any one or more of the following apply:

(i) the operator has not fully completed reclamation of the site to the standards set forth in the approved reclamation plan for the site;

(ii) the operator, any related party or any person who is directed or controlled by the operator or directs or controls the operator bears any reclamation responsibility under Federal or State law for an area proposed to be reclaimed, including, but not limited to, obligations pursuant to a mining permit, reclamation pursuant to section 18 or reclamation pursuant to any contract with the department, including abandoned mine land reclamation contracts; or

(iii) any other requirement of this section has not been met.

(b) An operator may apply bond credits which have been issued to him by the department against any reclamation bond obligation selected by the operator on unmined or previously mined areas except as specified in this section.

(c) The department may approve utilization of a bond credit in combination with conventional collateral or surety agreements.

(d) The department may require as a condition of granting the bond credit that the operator post a contract performance bond to insure that the operator completes the reclamation proposed to result in the bond credit. The performance bond is to be at least in an amount necessary to ensure reclamation of those areas proposed to be reclaimed and shall be released by the department upon completion of the work described in the approved reclamation plan.

(e) Bond credits are [not] transferable[.] *to another qualified operator approved by the department.*

(f) The special account established in the Remining Financial Assurance Fund for the bond credit program shall be the sole source of funds underwriting the bond credit program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

(g) Bond credits earned by a qualified operator may be used on a single permit or on multiple permits, whichever the operator chooses. A bond credit may be used two times; however, the bond credit cannot be used a second time until the department releases the bond credit from its first use. Any bond credit that is not used within five years from the date that it is earned or released will expire, including bond credits that have been transferred.

Section 6. Section 18 heading, (a.1), (a.2)(1) and (a.4) of the act, amended or added December 18, 1992 (P.L.1384, No.173), are amended and the section is amended by adding a subsection to read:

Section 18. Surface Mining Conservation and Reclamation Fund; Remining Environmental Enhancement Fund; Remining Financial Assurance Fund; *Department Authority for Awarding of Grants.*—* * *

(a.1) (1) There is hereby created a special fund in the State Treasury to be known as the “Remining Environmental Enhancement Fund.” The Secretary of Environmental Resources is authorized to transfer at the commencement of each fiscal year a total of one million dollars (\$1,000,000) into the Remining Environmental Enhancement Fund aggregated from the following sources:

(i) License and permit fees except reclamation fees paid to the department under this act pursuant to the department’s alternate bonding program.

(ii) Fines and penalties collected under this act.

(iii) Fees, fines and penalties collected pursuant to section 315 of “The Clean Streams Law,” including fines and penalties from mining operations collected under section 605 or other provisions of that act.

(iv) Fees, fines and penalties collected pursuant to the act of September 24, 1968 (P.L.1040, No.318), known as the “Coal Refuse Disposal Control Act.”

(v) Fees, fines and penalties collected pursuant to the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as “The Bituminous Mine Subsidence and Land Conservation Act,” not including funds received pursuant to section 6(a) of that act.

(2) All moneys placed in the Remining [**Reclamation**] *Environmental Enhancement Fund* and the interest it accrues are hereby appropriated upon authorization by the Governor to the department for the costs of operating a remining and reclamation incentive program, including designating areas suitable for reclamation by remining and establishing and operating a remining operator’s assistance program, but not including a bond credit or [**payment-in-lieu-of-bond**] *financial guarantees* program.

(a.2) (1) There is hereby created a special fund in the State Treasury to be known as the "Remining Financial Assurance Fund." The Governor is authorized to transfer up to five million dollars (\$5,000,000) from the allotment set forth in section 16(a)(1) of the act of January 19, 1968 (1967 P.L.996, No.443), known as "The Land and Water Conservation and Reclamation Act," to the Remining Financial Assurance Fund for the purposes of the Remining Financial Assurance Fund. All moneys placed in the Remining Financial Assurance Fund are hereby appropriated upon authorization by the Governor to the department for the purpose of:

(i) Providing financial assurance for the reclamation bond credit program set forth in section 4.13.

(ii) Providing financial assurance for the **[payment-in-lieu-of-bond] financial guarantees** program set forth in section 4.12.

Interest which accrues from the Remining Financial Assurance Fund shall be transferred into the Land and Water Development Sinking Fund established in section 10 of "The Land and Water Conservation and Reclamation Act" and shall be used for the purposes established therein.

* * *

(a.4) Priority for participation in the Remining Environmental Enhancement Fund and the Remining Financial Assurance Fund shall be given to licensed mine operators **[proposed] proposing** remining within areas designated suitable for reclamation by remining.

* * *

(j) The department may, upon written application, award grants to municipalities, municipal authorities and appropriate nonprofit organizations from the Surface Mining Conservation and Reclamation Fund and from funds the department receives from the United States for approved abandoned mine purposes authorized by this subsection. The purposes of the grants shall be consistent with all applicable Federal and State requirements related to the source of the funds. A grant awarded under this subsection shall be subject to such terms and conditions as established by the department.

Section 7. This act shall take effect in 60 days.

APPROVED—The 22nd day of May, A.D. 1996.

THOMAS J. RIDGE